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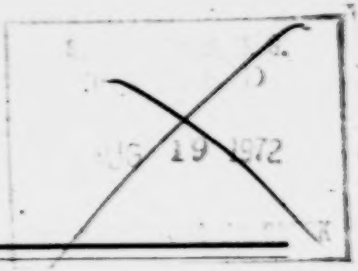
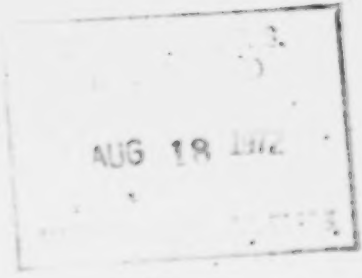


Supreme Court of the United States

OCTOBER TERM, 1971



NO. 71-1379

EARL L. WATTS,

Petitioner in Certiorari

vs.

WINTON TEAGLE ET AL.,

Defendants in Certiorari

PETITION OF EARL L. WATTS FOR REHEARING ON ORDER OF JUNE 19, 1972, DENYING HIS PETITION FOR WRIT OF CERTIORARI.

G. SEALS AIKEN,
Attorney for Petitioner,
Suite 1626 Candler Bldg.,
Atlanta, Georgia 30303

Supreme Court of the United States

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Earl L. Watts files this his petition for rehearing on the order of June 19, 1972 of this Court denying his petition for writ of certiorari to the Court of Appeals of Georgia for the purpose of having reviewed, corrected, and reversed, the decision and judgment of that court of October 21, 1971 (Watts vs. Teagle, et al. 124 Ga. App. 726) affirming the summary judgment of Judge Richard A. Thibadeau of the Superior Court of DeKalb County, Georgia for the defendants in his action for damages for fraud and deceit practised upon him by the defendants.

Honorable Lewis F. Powell, Jr., Associate Justice of this Court, granted to petitioner on June 27, 1972 an extension of time to and including August 21, 1972 in which to file a petition for rehearing on said order of June 19, 1972 denying his petition for a writ of certiorari to the Court of Appeals of Georgia.

The decision of the Court of Appeals of Georgia of October 21, 1971 affirming the summary judgment of Judge Richard A. Thibadeau of the Superior Court of DeKalb County, Georgia for the defendants in petitioner's said action for damages for fraud and deceit practised upon him by the defendants, unless reversed by this court, will deprive petitioner of his property to the extent of the amount sued for by him, by depriving him of due process of law and of equal protection of the law granted to other persons in like circumstances and similar situations in violation of Article I, Section I, Paragraphs I, II, III, IV, and XXIII and Article VI, Section XVI, Paragraph I of the Constitution of Georgia as applied to Georgia by Section I of Amendment XIV of the United States Constitution, and in violation of Amendment V of the U.S. Constitution as applied to the States by Section I of Amendment XIV thereof, in the following particulars:

1. In upholding Judge Richard A. Thibadeau in arbitrarily and capriciously rendering, in violation of Section I of Amendment XIV of the U.S. Constitution, the summary judgment on March 18, 1971 in favor of the defendants and in dismissing petitioner's complaint as amended, when the pleadings of the parties and affidavits submitted by petitioner presented questions of fact for the exclusive determination of a jury under Article VI, Section XVI, Paragraph I of the Georgia Constitution as applied to the State of Georgia by Section I of Amendment XIV of the U.S. Constitution.

2. In upholding Judge Richard A. Thibadeau in arbitrarily and capriciously depriving petitioner of due process of law and of equal protection of the law granted to other persons in like circumstances and similar situations by depriving him of a jury trial of all questions of fact presented by the pleadings and affidavits in the case, in violation of Article VI, Section XVI, Paragraph I and Article I, Section I, Paragraphs I, II, III, IV, and XXIII of the Georgia Constitution and Section I of Amendment XIV of the U.S. Constitution.

3. In upholding Judge Richard A. Thibadeau in exercising at the same time legislative, judicial, and executive powers of the State of Georgia in violation of Article I, Section I, Paragraph XXIII of the Georgia Constitution as applied to the State of Georgia by Section I of Amendment XIV of the U.S. Constitution, in granting a summary judgment for the defendants and in dismissing the complaint of petitioner as amended, when the facts and circumstances shown by the pleadings and affidavits presented questions of fact for the exclusive determination of a jury under Article VI, Section XVI, Paragraph I of the Georgia Constitution as applied to the State of Georgia by Section I of Amendment XIV of the U.S. Constitution.

4. In upholding Judge Richard A. Thibadeau in not holding that the pleadings of the parties and affidavits submitted by petitioner presented questions of fact and circumstances as to whether the defendants had conspired and successfully acted to prevent petitioner from exercising his option to purchase the property described in said option after inducing him to make substantial improvements thereon at his expense with the deliberate intention of preventing him from exercising said option, thereby depriving him of his property in the amount sued

for in violation of Article VI, Section XVI, Paragraph I and Article I, Section I, Paragraphs I, II, III, IV, and XXIII of the Georgia Constitution as applied to the State of Georgia by Section I of Amendment XIV of the U.S. Constitution, and in violation of Amendment V of the U.S. Constitution as applied to Georgia by Section I of Amendment XIV thereof.

The argument amplifying the reasons relied on for the allowance of the writ of certiorari and the authorities supporting the same are set forth on pages 10 through 19 of the petition for certiorari and will not be repeated here, but special attention is invited thereto.

Petitioner filed a verified complaint in the Superior Court of DeKalb County, Georgia on August 19, 1970 against the defendants in two counts for injuries and damages. In Count I he alleged that the defendants had injured and damaged him in the sum of $179,500.00 by conspiring and successfully acting to prevent him from exercising his option to purchase the Avondale United Methodist Church Property described in his said option. In Count II he alleged that the defendants were guilty of deliberage, fraudulent, and deceitful acts toward him with the intention of defrauding him, and which did defraud him by preventing him from exercising his option to purchase said property. He sued under Count II for general damages in the amount of $175,000.00; $4,500.00 for improvements made by him on said property; $5,000.00 for attorney's fees and $25,000.00 punitive damages.

On September 25, 1970 the defendants filed a motion for summary judgment in their behalf.

Petitioner filed a verified amendment to his complaint on October 26, 1970, in which he alleged in part and in substance as follows:

COUNT I

Beginning in March, 1970 and continuing through the remaining period of the option, the defendants deliberately refused to allow petitioner to exercise his option by refusing to allow him to purchase the property involved for the sale price specified in said option.

COUNT II

The defendants from time to time from March, 1970 through August 19, 1970 acted in concert with each other in preventing petitioner from exercising his option by refusing to convey said property to him for the purchase price specified therein. They are guilty, individually and collectively, of fraud and deceit toward petitioner in that they accepted $2,000.00 from him for the option and allowed him to spend over $2,500.00 in improving the property, and over $1,000.00 in advertising the same for sale, when they knew they did not intend to allow him to purchase the property for the purchase price of $150,000.00 specified in said option and intended instead to prevent him from doing so and to prevent him from selling said property to customers ready, willing, and anxious to buy the same, which he produced from time to time, beginning in March, 1970 and extending through the remainder of the period of said option. The improvements petitioner made on said property greatly increased its value and intensified the efforts of the defendants to prevent petitioner from exercising his option to purchase the property or to sell it during the period of said option. Plaintiff seeks and is entitled to the sum of $175,000.00 general damages, $2,000.00 for the amount he paid for the option, $2,500.00 for the cost of improvements made on said property, $1,000.00 for advertising the property, $25,000.00 for expenses of litigation, including attorney's fees, and $50,000.00 punitive damages. The defendants have acted in bad faith toward petitioner and as the result thereof he is entitled,

to recover from them all expenses of litigation, including counsel fees, which will amount to at least $25,000.00. He seeks and is entitled to recover said punitive damages by reason of the aggravating circumstances, either in the acts or the intentions of the defendants, to either deter them from repeating their said trespass or as compensation for the wounded feelings of the plaintiff.

On March 11, 1971 petitioner filed a motion to dismiss the motion of defendants for summary judgment in their behalf and attached thereto as his Exhibits A and B affidavits from Judson B. Ackerman and Leonard M. Duke supporting the allegations in his verified petition as amended. He contended in said motion that the grant of a summary judgment to the defendants would violate Amendments V and IX of the U.S. Constitution as applied to the States by Section I of Amendment XIV thereof.

Judge Thibadeau stated in his order granting summary judgment for defendants and in dismissing the complaint of petitioner, that he "considered the pleadings, requests for genuineness of documents and admission of facts in plaintiff's answer thereto, the affidavits and other matters in support of and in opposition of the motion (of the defendants for summary judgment) AND AFTER HEARING ORAL ARGUMENTS THEREON, the court is of the opinion that there is no genuine issue as to any material fact and defendants are entitled to a judgment as a matter of law." (Capitals added).

However, JUDGE THIBADEAU ARBITRARILY AND CAPRICIOUSLY REFUSED TO ALLOW MR. E.B. SHAW AS ATTORNEY FOR PETITIONER TO READ HIS MOTION TO DISMISS THE MOTION OF DEFENDANTS FOR SUMMARY JUDGMENT OR TO ARGUE THE PLEADINGS AND AFFIDAVITS IN OPPOSITION TO SAID MOTION OF DEFENDANTS.

It is very obvious from the excerpts presented in the petition for certiorari from the pleadings and affidavits before judge Thibadeau that there was both positive and circumstantial evidence requiring the exclusive consideration of a jury under Article VI, Section XVI, Paragraph I of the Georgia Constitution as applied to Georgia by Section I of Amendment XIV of the U.S. Constitution, and which would have authorized a jury to find that petitioner had been arbitrarily, capriciously, unjustly, and illegally prevented by overt and concerted acts of the defendants from exercising his option to purchase the property involved, pursuant to a conspiracy formed by them after petitioner paid for said option and made substantial improvements on the property.

The decision of the Court of Appeals of Georgia of October 21, 1971 affirming the order of Judge Thibadeau of DeKalb Superior Court granting a summary judgment for the defendants and dismissing petitioner's complaint as amended is IN DIRECT CONFLICT WITH THE DECISION OF THIS COURT IN *Hickman vs. Taylor, 329 U.S. 495, 67 S.Ct. 385, 388,* holding that "THE NEW RULES * RESTRICT THE PLEADINGS TO THE TASK OF GENERAL NOTICE-GIVING AND INVEST THE DEPOSITION-DISCOVERY PROCESS WITH A VITAL ROLE IN THE PREPARATION FOR TRIAL. * * * ."

Petitioner was entitled under the facts alleged in his verified petition as amended and in the affidavits submitted in support thereof and the decision of this Court in *Hickman vs. Taylor, 329 U.S. 495,* TO PROCEED WITH DISCOVERY PROCEEDINGS IN PREPARATION FOR TRIAL ON THE MERITS OF THE CASE BEFORE A JURY UNDER ARTICLE VI, SECTION XVI, PARAGRAPH I OF THE GEORGIA CONSTITUTION AS APPLIED TO GEORGIA BY SECTION I OF AMENDMENT XIV OF THE U.S. CONSTITUTION.

The Supreme Court of Georgia in *Reynolds vs. Reynolds, 217 Ga. 234, 246, 123 S.E.2nd 115*, followed and quoted from *Hickman vs. Taylor, 329 U.S. 495*, and also followed it in *Byrd vs. Ford Motor Co. et al, 118 Ga. App. 333*, holding that "A petition SHOULD NOT BE DISMISSED FOR FAILURE TO STATE CLAIM UNLESS IT APPEARS BEYOND DOUBT THAT THE PLAINTIFF CAN PROVE NO SET OF FACTS IN SUPPORT OF HIS CLAIM WHICH WOULD ENTITLE HIM TO RELIEF." It was followed in *Bell vs. Atlanta Cooperage Co., Inc. et al. 121 Ga. App. 207*, holding that "a complaint should not be dismissed unless the averments disclose WITH CERTAINTY that the plaintiff would not be entitled to relief under ANY state of facts which could be proved in support of such claim." (Capitals added).

Petitioner's complaint was dismissed by Judge Thibadeau WITHOUT ANY EVIDENCE WHATEVER IN OPPOSITION THERETO, WITHOUT ALLOWING PETITIONER TO CONDUCT ANY DISCOVERY PROCEEDINGS WHATEVER, AND WITHOUT A TRIAL BY A JURY OF THE ISSUES OF FACT PRESENTED BY THE COMPLAINT OF PETITIONER AS AMENDED AND AFFIDAVITS SUBMITTED BY HIM IN OPPOSITION TO THE MOTION OF DEFENDANTS FOR A SUMMARY JUDGMENT.

The decision of the Court of Appeals of Georgia in affirming said arbitrary and capricious ruling of Judge Thibadeau, unless reversed by this court, will deprive petitioner of his property to the extent of the amount sued for by him, without Due Process of Law and Without Equal Protection of the Law granted to other persons in like circumstances and similar situations, in violation of Article I, Section I, Paragraphs I, II, III, IV, and XXIII and Article VI, Section XVI, Paragraph I of the Georgia Constitution, and Section I of Amendment XIV of the U.S. Constitution as applied to Georgia.

Ga. Code Section 81A-156, dealing with Summary Judgments and which is applicable to this case under Section I of Amendment XIV of the U.S. Constitution, provides in sub-paragraph (c): "BUT NOTHING IN THIS SECTION SHALL BE CONSTRUED AS DENYING TO ANY PARTY THE RIGHT TO TRIAL BY JURY WHERE THERE ARE SUBSTANTIAL ISSUES OF FACT TO BE DETERMINED."

The verified pleadings of petitioner and affidavits submitted by him in support thereof and in opposition to the motion of the defendants for a summary judgment, and the authorities presented in this petition for rehearing show beyond question that petitioner HAS BEEN DEPRIVED OF HIS DAY IN COURT by the Court of Appeals of Georgia in affirming Judge Thibadeau in arbitrarily and capriciously refusing to allow his counsel to make any oral argument or to conduct any discovery proceedings or to present or cross-examine any witnesses or to try his case to a jury as provided by Article VI, Section XVI, Paragraph I of the Georgia Constitution as applied to Georgia by Section I of Amendment XIV of the U.S. Constitution. As held by this Court in *Hovey vs. Elliott et al, 167 U.S. 409, 17 S.Ct.844-5*, "It is a rule as old as the law, and never more to be respected than now, that NO ONE SHALL BE PERSONALLY BOUND UNTIL HE HAS HAD HIS DAY IN COURT, by which is meant until he has been duly cited to appear, AND HAS BEEN AFFORDED AN OPPORTUNITY TO BE HEARD. Judgment without such citation and OPPORTUNITY

WANTS ALL THE ATTRIBUTES OF A JUDICIAL DETERMINATION. IT IS JUDICIAL USURPATION AND OPPRESSION, AND CAN NEVER BE UPHELD WHERE JUSTICE IS JUSTLY ADMINISTERED. * * * A DENIAL TO A PARTY OF THE BENEFIT OF A NOTICE WOULD BE, IN EFFECT, TO DENY THAT HE IS ENTITLED TO NOTICE AT ALL, AND THE SHAM AND DECEPTIVE PROCEEDING HAD BETTER BE

OMITTED ALTOGETHER. IT WOULD BE LIKE SAYING TO A PARTY, 'APPEAR AND YOU SHALL BE HEARD:' AND, WHEN HE HAS APPEARED, SAYING, 'YOUR APPEARANCE SHALL NOT BE RECOGNIZED, AND YOU SHALL NOT BE HEARD.' In the present case, the district court not only, in effect, said this, but immediately added a decree of condemnation, reciting that the default of all persons had been duly entered. IT IS DIFFICULT TO SPEAK OF A DECREE THUS RENDERED WITH MODERATION. IT WAS, IN FACT, A MERE ARBITRARY EDICT, CLOTHED IN THE FORM OF A JUDICIAL SENTENCE. THIS LANGUAGE BUT EXPRESSES THE MOST ELEMENTARY CONCEPTION OF THE JUDICIAL FUNCTION." (Capitals added).

We are told in Acts 22 that when St. Paul was being mobbed and persecuted without any justification or hearing, the following occurred: "And they gave him audience unto this word, and then lifted up their voices, and said, Away with such a fellow from the earth, for it is not fit that he should live. And as they cried out, and cast off their clothes, and threw dust into the air, The Chief Captain commanded him to be brought into the castle, and bade that he should be examined by scourging; that he might know wherefore they cried so against him. And as they bound him with thongs, Paul said unto the centurion that stood by, Is it lawful for you to scourge a man that is a Roman, and uncondemned? When the centurion heard that, he went and told the Chief Captain, saying, Take heed what thou doest for this man is a Roman. Then the Chief Captain came, and said unto him, Tell me, art thou a Roman? He said, Yea. And the Chief Captain answered, With a great sum obtained I this freedom. And Paul said, BUT I WAS FREE BORN. Then straightway they departed from him which should have examined him, and the Chief Captain also was afraid, after he knew that he was a Roman, and because he had bound him."

Petitioner in this case IS A FREE BORN CITIZEN OF THE UNITED STATES OF AMERICA AND IS ENTITLED TO ALL THE PRIVILEGES AND IMMUNITIES GUARANTEED TO HIM IN SAID CAPACITY UNDER THE CONSTITUTIONS OF GEORGIA AND THE UNITED STATES, AND WHICH HAVE BEEN ARBITRARILY AND CAPRICIOUSLY DENIED HIM BY JUDGE THIBADEAU AS AFFIRMED BY THE COURT OF APPEALS OF GEORGIA.

WHEREFORE, Petitioner earnestly and urgently appeals to this Honorable Court to grant this petition for a rehearing on its order of June 19, 1972 denying his petition for writ of certiorari and that it now grant said writ to the Court of Appeals of Georgia to review, correct, and reverse its decision of October 21, 1971 affirming the arbitrary, capricious, and unjust judgment of Judge Thibadeau of DeKalb Superior Court of March 18, 1971 DEPRIVING PETITIONER OF HIS DAY IN COURT IN GROSS VIOLATION OF SECTION 1 OF AMENDMENT XIV OF THE U.S. CONSTITUTION.

Respectfully submitted,

G. SEALS AIKEN,
Attorney for Petitioner

1626 Candler Bldg.,
Atlanta, Ga. 30303

E. B. SHAW,
Of Counsel for Petitioner

CERTIFICATE OF COUNSEL

The foregoing petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 58 of the Supreme Court of the United States.

This the _____ day of _____, 1972.

_____

G. SEALS AIKEN,
Attorney for Petitioner

_____

EDGAR B. SHAW
Of Counsel for Petitioner

CERTIFICATE OF SERVICE

This is to certify that I have this day served the defendants in the foregoing petition for rehearing by sending a copy of the same by first-class mail to Edward D. Wheeler, Esq. and O.E. Williams, Esq., 807 First National Bank Bldg., Decatur, Ga. 30030, counsel of record for said defendants.

This the _____ day of _____, 1972.

_____

G. SEALS AIKEN,
Attorney for Earl L. Watts